

# On the importance of coordinated international rules in cross-border circulation of data

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**Abstract:** *CBDF (Cross-border data flow) is a social phenomenon with the development of digital information technology, and it is also the main way of digital trade. It can even be said that all trade related to CBDF can be called digital trade. With the continuous development of digital economy and the maturity of digital technology, the black and gray industry is constantly upgrading, and the national data security problem is becoming increasingly prominent. This paper analyzes the legal risks of cross-border data circulation at present, and then discusses the importance of coordinated international rules in cross-border data circulation. We should improve the common standards and strengthen the strength to deal with the competition of digital industry, so as to help the substantive progress of international rules and regulations of CBDF in the field of digital trade.*

**Keywords:** *Cross-border data flow; Coordinated; International rules*

## 1. Introduction

With the continuous development of the Internet and economic globalization, data plays an increasingly important role in society, and how to provide support and management of digital trade at the level of international rules has become a hot spot in current international economic law [1]. Information is the basic means of production of digital economy, and data independent of geographical conditions is the basic factor of production. Promoting international cooperation and expanding high-level openness are the proper meanings of the development of digital economy. When the difference of value orientation in the regulation of CBDF(Cross-border data flow) in different countries directly leads to the fragmentation and inconsistency of the global regulation rules of CBDF, it also leads to the difficulty of regulatory coordination at the international level.

## 2. The basic connotation of CBDF

CBDF can be understood as crossing national boundaries from one country or region to another. The transmission channel of data is the server, so the cross-border flow of data is the flow of data between servers in two countries or regions. Therefore, data can also be regarded as a factor of production that can guarantee the economic operation of market players [2-3]. From the theory of the international flow of production factors, as a production factor, the international flow of data is inevitable. As a key factor of production for the prosperity and development of digital trade, it depends on the products or services of enterprises, flows and configures globally with low cost and high efficiency, and promotes global economic and trade exchanges and development.

CBDF is a social phenomenon with the development of digital information technology, and it is also the main way of digital trade. It can even be said that all trade related to CBDF can be called digital trade. CBDF in digital trade refers to the cross-border data transmission activities using the Internet in the process of digital trade [4]. "Regulation" in the context of community system means the control of higher subjects, and this control has a guiding function. Therefore, the legal regulation of CBDF in digital trade means that the state promulgates laws to control and guide the CBDF activities implemented by private entities in digital trade, and requires private entities to implement CBDF activities according to the law.

### **3. Legal risk analysis of cross-border data circulation**

#### ***3.1. Infringement of personal privacy***

CBDF subverts the traditional business model and plays an irreplaceable role in information sharing, smart life, cross-border payment, credit evaluation and statistical data monitoring. However, in the era of big data and artificial intelligence, public departments and large enterprises collect, store and process massive personal data of citizens. The collection methods, motivation and possible consequences of these data have gradually lost control, and the protection of personal privacy has become a prominent issue in the cross-border flow of data [5-6]. Especially in the CBDF, the relationship between individuals and data collection users is weakening day by day, and individuals cannot effectively participate in the process of data flow. Data assetization gives birth to data transaction behavior, personal data becomes the object of transaction directly, and the data transaction that is out of control in a wide range provides a hotbed for illegal activities.

#### ***3.2. Lack of effective universal international rules and regulations***

As an international trade law that promotes trade liberalization and facilitation, trade agreements also play an indispensable role in resolving trade barriers between countries. However, this effect is limited to the parties to regional trade agreements, and it is undoubtedly a kind of discrimination against countries outside the region. The new form of digital products surpasses the traditional product classification. As a multilateral trade law that can bind most countries in the world and is committed to reducing trade barriers, WTO rules fail to effectively regulate the CBDF in digital trade [7]. Therefore, it is difficult for WTO rules to effectively regulate digital trade, and naturally, it is also difficult to effectively regulate CBDF in digital trade, and it is even more difficult to universally reduce the trade barrier of CBDF control measures.

#### ***3.3. Threatening national data security***

With the increasing proportion of CBDF in the digital economy, the commercial economic value and social value of data are incomparable, so it is necessary to find a balance between CBDF and data protection. With the continuous development of digital economy and the maturity of digital technology, the black and gray industry is constantly upgrading, and the national data security problem is becoming increasingly prominent. If the CBDF is maliciously abused or intentionally used, and the data involved just belongs to international sensitive information or public interests, it will pose a big threat to the national data security.

### **4. The importance of coordinated international rules in cross-border data circulation**

#### ***4.1. Promote legitimate and controllable CBDF***

The value of data lies in the flow, and the way to keep its vitality is the flow. "Legitimate" and "controllable" respectively correspond to "self-security" and "utilization security" of cross-border data. Cross-border data security means that the information carried by the data itself is complete and reliable; Cross-border data utilization security emphasizes the prevention and avoidance of security risks caused by a large number of frequent CBDFs [8]. Therefore, in the supervision and coordination of CBDF, it is necessary for China to encourage proper and controllable CBDF while basing itself on the overall national data security concept, big data-driven technological innovation and the realistic goal of digital economy development. This will not only help promote the CBDF, but also be conducive to the mutually beneficial and win-win international supervision and coordination.

The EU is the first economy to regulate the cross-border flow of data through personal data protection legislation. Specifically, for the data flow between EU member states, member states only need to comply with their own regulations on domestic data transfer, so they can carry out data transmission activities, and they must not restrict or prohibit the CBDF between member states on the grounds of privacy protection [9]. The procedure for transferring personal data outside the EU is shown in Figure 1:

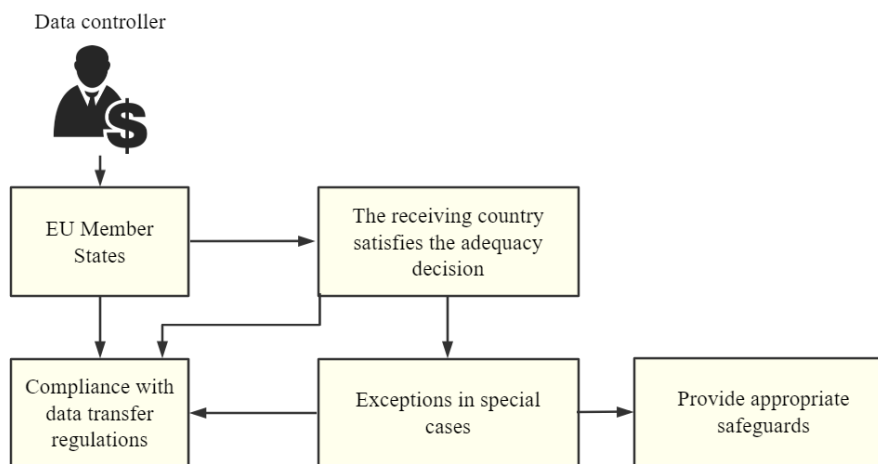


Figure 1: Procedures for transferring personal data outside the EU

Cooperation and win-win is the goal of mutual benefit and win-win supervision and coordination. Actively seek to establish a regulatory coordination mechanism for CBDFs with important trading partners such as governments and international organizations through bilateral and multilateral agreements, jointly promote the governance process of CBDFs, implement the concept of equality, mutual trust, win-win cooperation in the regulatory coordination process, and fully express China's goodwill in the regulatory coordination of CBDFs.

#### 4.2. Improve privacy classification protection

The protection means, tendency and level of CBDF lack an international standard in today's rapid technological innovation; All these require countries to reach a consensus on the protection level of human data and the efficiency of cross-border data circulation. There are many kinds of cross-border data, and there are huge differences in legal systems, economic systems, political systems and social habits among countries. Therefore, it is difficult to manage cross-border data.

For data involving state secrets, national security and economic security, it is strictly forbidden to cross the border, and it is required that it must be stored and processed in domestic data centers; Restrictions on CBDF are imposed on other data held by the government and the public sector, such as security risk assessment; For ordinary personal data, cross-border flow is allowed, but to meet the requirements of safety management, accountability system and contract intervention can be adopted for management [10].

CBDF rules first appear in terms of data protection and privacy protection, because in the context of big data, protecting personal privacy and personal data rights is the target requirement of CBDF regulations. However, with the continuous development of big data, network technology and blockchain, it is possible to intelligently locate and search data subjects, which increases the possibility of privacy rights being violated. Therefore, personal data rights and privacy rights need to be protected by CBDF rules. Personal data information is easily infringed in the practice of data flow. Therefore, the security of personal data and the protection of personal privacy are inseparable from the necessary regulation of CBDF.

#### 4.3. Coordinate the principle of extraterritorial application of rules in the domain

The data flow may be global, but the legislation and supervision of data flow are local. Jurisdiction conflict is an unavoidable problem in the regulation of CBDF. Applicable to all data controllers and processors whose place of business is within the EU, regardless of whether the data processing takes place inside or outside the EU. Without the assistance and cooperation of the host country, the so-called supervision, investigation and law enforcement can't be realized. At this time, if the investigation and law enforcement are forcibly initiated, trade conflicts and even diplomatic conflicts may be caused. Finally, too extensive jurisdiction will bring high institutional supervision costs to the EU.

In order to meet the needs of cross-border data transmission between them, the contract terms are usually adopted. The data subject can be directly accountable to the importer. In addition, if the exporter fails to fulfill the obligation to ensure the data security of the importer, the data subject has the

right to directly file a dispute resolution procedure with the exporter.

The development of digital economy is inseparable from digital trade, and the rapid development of digital trade benefits from the promotion of CBDF. The advantages of digital economy development can enhance the right to speak of national governance of CBDF, thus forming international convenience. It can take the maximization of national interests as the goal to participate in the international rules and regulations of global CBDF. Countries that insist on CBDF are not free without restrictions, and in the process of free data flow, they are restricted by data localization or other exceptions, thus ensuring the normal exercise of a country's regulatory power and sovereignty.

## 5. Conclusions

Information is the basic means of production of digital economy, and data independent of geographical conditions is the basic factor of production. Promoting international cooperation and expanding high-level openness are the proper meanings of the development of digital economy. The protection means, tendency and level of CBDF lack an international standard in today's rapid technological innovation; All these require countries to reach a consensus on the protection level of human data and the efficiency of cross-border data circulation. In the face of international problems, we should improve the compatibility of CBDF rules, and at the same time, improve the coordinated general standards, and strengthen the strength to deal with the competition in the digital industry, so as to enhance the international discourse power of CBDF and put forward China's plan.

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